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LETTER DATED 7 NOVEMBER 1994 FROM THE CHARGE D'AFFAIRES A.I. OF THE PERMANENT MISSION OF ZAIRE TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to inform you and all the members of the Security Council of the views of the Government of the Republic of Zaire concerning the wording of certain provisions of draft resolution S/1994/1168 on the establishment of an international criminal tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandese citizens responsible for genocide and other such violations committed in the territory of neighbouring States, and, in particular, of certain articles of the annex thereto.

First, I wish to reassure the Council that the Government of Zaire recognizes the need for the establishment of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in Rwanda.

However, the Government of Rwanda feels constrained to make the following substantive comments with regard to the annex to the draft resolution proposing the establishment of the Tribunal:

1. The introductory paragraph of the annex containing the statute of the International Tribunal states:

> "Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandese citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as the 'International Tribunal for Rwanda') shall function in accordance with the provisions of the present Statute".

The Government of Zaire is of the view that all States Members of the United Nations are bound by all measures adopted by the Security Council under Chapter VII of the Charter. It does not therefore understand the justification

for introducing a narrower concept of the collective responsibility of the international community by specifying "territory of neighbouring States". A better wording would be "territory of States Members of the United Nations".

The Government of Zaire requests the members of the Security Council to replace the phrase "territory of neighbouring States" wherever it appears in the text by the phrase "territory of States Members of the United Nations".

This remark applies to paragraph 1 of the draft resolution and to the introductory paragraph and articles 1, 7 and 8 of the annex (Statute of the International Tribunal).

2. With regard to article 7, entitled "Territorial and temporal jurisdiction", the Government of Zaire believes that the first sentence of this article is tantamount to imposing a decision on it. It cannot accept this provision unless the obligation to waive jurisdiction in favour of the International Tribunal is imposed on all States Members of the United Nations and is not limited only to neighbouring States, which are already suffering under the burden of the events inflicted on them by the crisis in Rwanda.

3. Article 8, concerning the "Concurrent jurisdiction" of the International Tribunal for Rwanda and national courts, would be clearer if the Security Council were to establish a simple rule whereby any judicial proceedings which revealed any link whatsoever with crimes committed in Rwanda should be halted by the national court and referred to the International Tribunal for Rwanda. As the text now stands, the primacy of the International Tribunal is not guaranteed, since to recognize a competence concurrent to both jurisdictions is tantamount to recognizing that the first to be notified of a case must carry that case to judgement. This would give rise to pointless jurisdictional conflicts which could be avoided by a clear and simple text.

4. Paragraph 2, subparagraph (b), of article 9, entitled "Non bis in idem", opens up the possibility of endless controversies.

In the draft resolution, the Security Council does not clearly specify which authority or organ is competent to determine whether the national court proceedings were not impartial or independent or were designed to shield the accused from international criminal responsibility, or whether the case was not diligently prosecuted.

The Government of Zaire considers that the organ responsible for dealing with this matter must be designated by name. Zaire's choice would be the International Court of Justice, a respectable institution, or the international criminal court the draft statute of which is being considered by the Sixth Committee of the General Assembly.

The Government of Zaire cannot accept that the Security Council, which is an eminently political organ, should arrogate unto itself the power to determine the validity of judicial proceedings or of a judicial decision.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) LUKABU KHABOUJI N'ZAJI
Deputy Permanent Representative
Chargé d'affaires a.i.